THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2942 of 2006

Dated: 15.02.2007

Between:

M/s Vemgamamba Stone Crusher, rep.by Proprietor,
Eleswaram, East Godavari District.

..... PETITIONER

AND

The Government of A.P.,rep.by its Secretary,
Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.2942 of 2006

ORDER:

The land in survey Nos.52 and 53 of Chinna Shankarapadu Village, Prathipadu Mandal, East Godavari District is a hillock. The petitioner was granted three leases over an extent of 9 hectares in survey No.53 (out of the total extent of about 300 hectares) for quarrying road metal and the same are still valid. The quarry of the petitioner is located in the lower level of the hillock. Be that as it is, the petitioner statedly applied for another lease over another extent of land on 27.10.2005. When the same was pending, sixth respondent and ten others also made applications seeking quarry lease over different extents of land in survey No.53 as well as other survey numbers. Having come to know about this, the petitioner approached the official respondents requesting to prefer the application made by it keeping in view the safety of the workers, contending that if the lease is granted to third parties in survey No.53 over upper levels of hillock, it is likely to endanger the quarry of the petitioner's as well as life of its workers and employees. The petitioner strongly relies on a letter of second respondent dated 08.10.1974 prohibiting grant of leases at upper levels of hillock when a lease was granted in the lower levels.

In this writ petition, the petitioner seeks a writ of Mandamus declaring the action of respondents 1, 3 and 5 in not implementing the instructions of second respondent dated 08.10.1974 as illegal and arbitrary and for a consequential direction to the official respondents to give preference to the application dated 27.10.2005 submitted by it for granting of mining lease over an extent of 9 hectares in survey No.53.

This Court, while admitting the writ petition on 16.02.2006, initially ordered notice on the miscellaneous application, being W.P.M.P.No.3622 of 2006, filed for interim direction to the official respondents not to grant mining lease over an extent of 9 hectares in survey No.53 in favour of third parties. Subsequently on 31.03.2006, this Court passed interim orders directing the official respondents to maintain *status quo* in the matter of grant of quarry lease in respect of upper level on the slope of survey No.53. These matters were again listed before this Court. Today, the matter was heard finally and is being disposed of by this order with the consent of the learned counsel for the petitioner and the learned counsel for the contesting respondents.

Fifth respondent, namely, the Assistant Director of Mines and Geology, Rajaymundry, filed a counter-affidavit on behalf of respondents 1, 3 to 5. The relevant averments are as follows. The total extent of land in survey No.53 is 296 hectares. Apart from the area for which the petitioner was granted lease and also the area of 0.75 hectares granted to other persons, there is still an extent of 11.228 hectares available in the survey. Seeking lease of this, twelve applications including that of the petitioner were received. Therefore, a survey was conducted by the Geology and Survey team. It identified 12 blocks of vacant land throughout the strike length. These areas are classified into safe blocks, partial safe blocks and totally unsafe blocks. The survey team reported that keeping in view the safety aspects, an area to an extent of 2.554 hectares has been categorised as totally safe area and 3.874 hectares as partially safe area and 2.611 hectares as unsafe area to the existing leases. The allegation

that the new areas are located at the upper side of the present area operated by the petitioner is denied asserting that there is possibility of operating the areas without causing any hindrance to the petitioner. Therefore, the department is planning to consider grant of leases by imposing reasonable restrictions keeping in view the instructions issued by third respondent to Government that the instructions of second respondent should be followed while granting leases on the slopes of hillocks. It is also alleged that the petitioner violated the terms and conditions of lease by encroaching upon adjoining lease areas and therefore, his lease is liable for termination and that so as to occupy the entire hillock area, he filed instant writ petition.

With the assistance of the learned counsel for the petitioner and the learned Assistant Government Pleader for Mines and Geology and the learned counsel for sixth respondent, this Court has gone through the material placed before this Court. The letter supra, vide No.Gel/32(11)74/20038-58 dated 08.10.1974 addressed by second respondent to first respondent reads as under.

> From
> The Director-General of Mines Safety,
> Dhanbad.
>
> To
> The Secretary to the Govt. of
> A.P. Ministry of Mines and
> Geology, Hyderabad – A.P.
>
> To
> All State Governments
>
> Sub: Grant of leases to different managements for work quarries on the same slope of hill at different heights.
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> ***
>
> Sir,
>
> I write to bring to your kind attention hazards to workers employed in mines being worked at a lower level by the working of another mine in the upper level on the same slope of a hill. When two such mines belonging to two different owners are worked on the same slope of the hill, there is always the risk of boulders falling/rolling from the mine in the upper level causing accidents to persons employed in mine at the lower level. In view of the difference in managements of such mines, obviously there can be no control by the mine owner of one mine on the work of the other. The records of this directorate show the existence of a number of mines of the same mentioned above, notably in the iron-ore mining areas of Bihar, Orissa and Karnataka. Recently there were two different fatal accidents by boulders rolling from mine in upper level causing death of persons working in the mines at lower level.
>
> I am therefore writing this to request you to kindly keep this aspect in mind in the grant of future leases and to ensure that governments take adequate precautions in respect of leases already granted, in working such mines on the slope of the hills.
>
> An acknowledgement of this letter and action taken in the mines is requested.

The competent authorities while granting mining leases were requested to keep in mind the hazards of granting lease on upper level on the same slope of the hill. It was also pointed out in the above letter that when two leases at two different levels are granted to two different persons, there is always risk of boulders rolling from mine in upper level causing accidents to the persons

employed in the mining at lower level. As rightly pointed out by the learned Assistant Government Pleader for Mines and Geology, these instructions issued by second respondent were also communicated by third respondent to fifth respondent. Indeed while making reference to these instructions, fifth respondent in the

counter-affidavit states that these aspects have been kept in mind by the Geology and Survey team, while submitting the report categorising the available area into safe/partially safe/unsafe zones. It is also admitted that as and when said twelve applications are considered these aspects will be kept in mind. This would show that the writ petition is filed apprehending that the petitioner's application may not be considered and the instructions may be ignored. That is not the case here. The official respondents admit that they would keep in mind instructions issued by second respondent while considering the applications for grant of lease. Therefore, observing that respondents 4 and 5 should keep in mind the instructions issued by second respondent in the letter dated 08.10.1974 extracted hereinabove, the writ petition is disposed of. During the pendency of the writ petition, it appears that respondents 6, 7 and others were granted leases for the area/part of the area they applied for. These leases were, however, made subject to the result of the writ petition. Therefore, there should be fresh consideration of the applications received. As seen from the counter affidavit, the applications made by the petitioner, sixth respondent and ten others have been pending before the respondent authorities for over one year and therefore, they should be disposed of as early as possible, preferably within a period of six weeks from the date of receipt of a copy of this order. No costs.

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(**V.V.S.RAO, J**)

15th February, 2007
ghn
NOTE: Dispatch order copy
By 19.02.2007.
(By order)
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